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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 94-2240

ROBERT D. SPICKLER,
Plaintiff, Appellant,

v.

STATE OF MAINE,
Defendant, Appellee.

JUDGMENT

Entered: May 18, 1995

This cause came on to be submitted on the briefs and original record on appeal from the United States District Court for the District of Maine.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By The Court:

FRANCIS P. SCIGLIANO, Clerk

By: JANICE M. O'NEIL
Chief Deputy Clerk

[cc: Messrs. Spickler and Ketterrer]

Per Curiam. Plaintiff Robert Spickler has filed a 42 U.S.C. Sec. 1983 action against the State of Maine, complaining that the state courts have deprived him of an impartial forum in violation of his First and Fourteenth Amendment rights. As plaintiff's complaint is irreparably flawed in various respects, we affirm the amended judgment of dismissal.

First, it is now settled that a state is not a "person" subject to suit under Sec. 1983. See, e.g., Hafer v. Melo, 502 U.S. 21, 25-26 (1991); Will v. Michigan Dep't of State Police, 491 U.S. 58, 62-70 (1989). Second, the action is barred by the Eleventh Amendment. Contrary to plaintiff's suggestion, the enactment of Sec. 1983 did not serve to abrogate the states' Eleventh Amendment immunity. See, e.g., Quern v. Jordan, 440 U.S. 332, 342 (1979). And contrary to his further contention, such immunity extends to actions seeking injunctive relief against a state as well as to those simply seeking damages. See, e.g., Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc., 113 S. Ct. 684, 688-89 (1993); Pennhurst State School & Hosp. v.

Halderman, 465 U.S. 89, 100-01 (1984); Cory v. White, 457 U.S. 85, 90-91 (1982).[1]

Third, plaintiff fails to appreciate that lower federal courts lack jurisdiction "over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege the state court's action was unconstitutional". District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 486 (1983); accord, e.g., Rooker v. Fidelity Trust Co. 263 U.S. 413 (1923). Finally, most if not all of the instant complaint falls within the scope of the 1987 injunction barring plaintiff from filing further federal court actions without leave of court. For the reasons recited above, as well as those enumerated by the district court, we agree with the court's conclusion that plaintiff has not made a prima facie showing as required by that injunction.

Affirmed.

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1. Plaintiff does not argue that Maine has affected a general waiver of its Eleventh Amendment immunity in cases of this nature. We thus need not address the issue, other than to note that such a contention has been elsewhere rejected. See, e.g., Grenier v. Kennebec County, Maine, 733 F. Supp. 455 (D. Me. 1990).

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

RPBERT D. SPICKLER, Plaintiff	)	
v.	)	CIVIL NO.94-272-P-C
STATE OF MAINE, Defendant	)	

AMENDED JUDGMENT

In accordance with this Court's endorsement dated on September 15, 1994 on the aComplaint and the Order Denying Plaintiff's Motion for the Court to Find that the Complaint Presents at Least a Prima Facie Case and is Brought in Good Faith dataead October 17, 1994, judgment of dismissal is hereby entered.

WILLIAM S. BROWNELL
Clerk

By: Christa K. Thurber
Deputy Clerk

Dated at Portland, Maine this 18th day of October, 1994.

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

ROBERT D. SPICKLER, Plaintiff v. STATE OF MAINE, Defendant	Civil No. 94-272-P-C

ORDER DENYING PLAINTIFF'S MOTION FOR THE COURT TO FIND THAT THE COMPLAINT PRESENTS AT LEAST A PRIMA FACIE CASE AND IS BROUGHT IN GOOD FAITH

After a further careful study of each of the counts of the proposed Complaint herein, the Court FINDS that: (1) all counts set forth in the Complaint are attemps by Plaintiff to relitigate matters previously litigated by himself and others and resolved against Plaintiff; (2) that each claim attempted to be stated against the Defendant, State of Maine, is frivolous and without any merit; (3) that the Complaint does not state any prima facie case within the meaning of this Court's endorsement of September 15, 1994, herein; (4) that pursuit of the proposed allegations will constitute further abuse by this Plaintiff of the process of this Court and a wholly unwarranted imposition upon the parties and the Court; and (5) that the Complaint is not brought in good faith.

Accordingly, this Court's dismissal of the Complaint on September 15, 1994 will stand as originally entered.[1]

So ORDERED.

/S/

GENE CARTER
Chief Judge

Dated at Portland, Maine this 17th day of October, 1994.

[1]Plaintiff has recently been rebuffed by the courts of the State of Maine in his most recent attempts to relitigate several of the matters indicated in the proposed Complaint herein. See Spickler v. Dube, 644 A.2d 465 (1994), and Spickler v. Greenberg, 644 A.2d 469 (1994), copies of which are attached hereto.

EXHIBIT IV

This EXHIBIT IV, although part of the proceedings in Spickler v. York, is a general representation of some of the tactics resorted to by adversary counsel in other cases.

Mr. Piper and his assistant made no response to this document. They could not offer any plausible explanation against the incontrovertible evidence which established their dishonesty.

Even so, the Law Court, in response to Spcikler's MOTION TO STRIKE, stated, in effect, and apparently ignoring all of the proof against the attorneys, that perhaps Spickler is the one who is guilty of misconduct.

[See Order of the Law Court dated August 12, 1994]
[EXHIBIT V]

From the unconstitutional treatment of Spickler by the present Law Court, which is currently considering the York appeal, Plaintiff can prospectively say that, not only will the Law Court refuse to strike Appellee York's Brief, it will throw out the entire case. It has already notified the parties that it will not hear oral arguments in this case.

/S/_____
Robert D. Spickler

STATE OF MAINE

ON APPEAL
From the Superior Court
Cumberland, ss.

SUPREME JUDICIAL COURT
Sitting as the Law Court
Law Docket #CUM 94-223

ROBERT D. SPICKLER,
Plaintiff

v.

ROBERT M. YORK,
Defendant

MOTION TO STRIKE
APPELLEE'S BRIEF

1. Plaintiff/Appellant moves this honorable Law Court to strike Appellee's Brief on the grounds that his brief distorts facts crucial to Appellant's interests and violates the Rules which demand good faith conduct of his counsel.
2. Appellant's Memorandum in Support of this motion, filed herewith, argues with specificity the reasons why this motion should be granted.

Movant asks this Court to grant a separate hearing on ths motion prior to the time that may be set aside for oral arguments or, in the alternative, he asks that the Court grant additional time to argue this issue at the time of oral arguments on the merits of the appeal.

Respectfully submitted this 28th day of July 1994.

/S/ _____
Robert D. Spickler,
Plaintiff/Appellant,
pro se

HCR 31-Box 109
Phippsburg, Maine 04562
Tel. 207/389-2464

STATE OF MAINE

ON APPEAL
From the Superior Court
Cumberland, ss.

SUPREME JUDICIAL COURT
Sitting as the Law Court
Law Docket #CUM 94-223

ROBERT D. SPICKLER,
Plaintiff

v.

ROBERT M. YORK,
Defendant

APPELLANT'S MEMORANDUM IN SUPPORT OF MOTION TO STRIKE APPELLEE'S BRIEF.

A SUMMARY OF THIS MEMORANDUM

This memorandum shows that counsel for York have abused their positions as Officers of the Court and members of a large law firm to harm pro se appellant, Spickler, in this appeal by distorting the Record and presenting falsehoods in their Brief with the intention of misleading the Law Court into making the wrong decision.

These counsel rely on the fact that the Law Court is correctly inclined, and has the right to believe that every licensed attorney who appears before them would follow the rules and not violate their oaths not to do falsehoods before the Court.

On the other hand, Spickler, appearing pro se, has no alancing presumption made in support of statements and assertions made by him to the Court.

It is this imbalance of presumptions of honesty that Movant asks this Court to address. For it is

this imbalance on which various other counsel rely when appearing against Spickler. They have used it to his detriment.

The Court is asked to take judicial notice from the record of the same type of misconduct of Attorney Jonathan Brogan in Spickler v. Greenberg, recently decided in CUM-93-633, decided on July 11, 1994, and that of Attorney Richardson referred to on Appeal in Spickler v. Dube, CUM-89-302, decided on July 11, 1994.

This misconduct on the part of these various attorneys has been persuasive and has effectively become a modus operandi when they deal with Spickler.

Such counsel misconduct should be addressed and dealt with in that no one who is faced with it can be given due process of law while pursuing his rights in the Maine courts.

ARGUMENT IN SUPPORT OF MOTION

Our laws grant the honor of appointment as an Officer of the Court to all attorneys who make the oath "to do no falsehoods" before the Court.

THE MAINE BAR RULES make it clear that a lawyer shall not knowingly make a false statement, 3.7(a); and when appearing before a tribunal, he shall employ only such means that are consistent with the truth and shall not seek to mislead the judge or jury by any false statement of fact.

In appearing in a professional capacity before a tribunal, a lawyer shall not state or allude to any matter that will not be supported by the evidence. 3.7(e)(2)(ii)

For the convenience of this Court, Movant Spickler has reproduced Appellant's Reply Brief in this appeal, and attaches it hereto as EXHIBIT "A".

Appellant's Reply Brief proves, under any standard, that Appellee's Brief is pervaded with falsehoods and its purpose is to mislead the Court. It clearly violates the mandates of the Rules of Conduct of practicing attorneys and, to do justice, this Court should strike it from Appellee's defense of this appeal.

Movant has been subjected to similar misconduct by other defense attorneys in other cases.[1]

In that the misconduct in those cases are relevant to this motion, this Court is asked to take judicial notice of them.

Judicially Noticeable Case #1

In Spickler v. Greenberg, appealed CUM-93-663, decided July 11, 1994.

In that case on appeal, Spickler argued and submitted evidence covered by seventeen pages of his Brief on Appeal that Mr. Brogan presented falsehoods

[1]In each of those cases, Movant Spickler has brought it to the attention of the Law Court as a side issue of peripheral importance. The Law court has remained silent until now on this issue.

to the Court and Jury. [See EXHIBIT "B" attached hereto.]

Mr. Brogan, in response to these seventeen pages of clear evidence of his misconduct, gave a rhetorical reply of one paragraph. In fact, he gave no response. [See EXHIBIT "C"]

When accused, (Mr. Brogan) offers no reponse to the evidence presented, the conclusion is against him. McCormick, Evidence, Sec. 338 at 956 (3rd. ed. 1984)

Judicially Noticeable Case #2

In Robert D. Spickler, et als. v. Dube, et als., CUM-89-302 (decided July 11, 1994) in response to Defendant's Brief, which argued that Spickler goes around making unjust claims against attorneys, Spickler asserted to the Law Court in his Reply Brief at Page 7 that Mr. Richardson had falsely stated to the U. S. District Court, ex parte that Spickler's attorney, Duane Fitzgerald, had stated that he believed that the letter, allegedly sent from Dube to Spickler, was legitimate.

This statement made by Richardson was known to be false when he made it to the District Court. [See EXHIBIT "D"]

Judicially Noticeable Case #3

In the case, Spickler v. Key Bank, CUM-92-44, Movant complained to the Law Court that he was

physically shoved by Attorney Robitzek during the trial of that case.

While the misconduct of Mr. Robitzek is not one of dishonest statements made by him, it is, nevertheless, another illustration of opposing attorneys being permitted to abuse him.

The Law Court is asked to contemplate what would have happened to Spickler if the tables were turned and he had been the one who had shoved Robitzek around.

Considering what happened to him when he reacted to Mr. Brogan's lies by calling him a phoney bastard, he would have been arrested on the spot. [See EXHIBIT "E"]

CONCLUSION

There can be no question in the minds of this honorable Law Court that Robert D. Spickler, in his orderly and bona fide search of justice in the Maine courts, has been subjected to the misconduct on the part of opposing counsel which has all but obliterated his consitutional right to due process under the Fourteenth Amendment to the Constitution of the United States.

He begs this Court to rule for the record that it will not tolerate re-occurences of misconduct by lawyers who oppose him who falsify facts and distort interpretations of the law.

The Law Court should grant this Motion and strike Appellee's Brief from the Appeal and bring these mendacities to an end.

Respectfully submitted this 28th day of July 1994.

/S/_____

Robert D. Spickler,
Plaintiff/Appellant, pro se

HCR 31 - Box 109
Phippsburg, Maine 04562

Tel. 207/389-2464

STATE OF MAINE

ON APPEAL
From the Superior Court
Cumberland, ss.

SUPREME JUDICIAL COURT
Sitting as the Law Court
Law Docket #CUM 94-223

ROBERT D. SPICKLER,
Plaintiff/Appellant

v.

ROBERT M. YORK,
Defendant/Appellee

REPLY BRIEF

Robert D. Spickler
Plaintiff-Appellant
Appearing pro se

HCR 31 - Box 109
Phippsburg, Maine
04562

Tel. 207/389-2464

A SPECIAL NOTICE TO THE LAW COURT

Appellee York's Brief resorts to misstatements of facts and distortions of the record to such a degree that it endangers pro se Appellant Spickler in that he may not receive a fair consideration of the points he makes in this appeal.

Perhaps Appellee's attorneys, because they are members of a firm staffed with fifty lawyers, have the theory that a reviewing court will always accept the legitimacy of statements made by them when those statements are in conflict with those of a non-lawyer who chooses to represent himself.

Appellant urges the Court to examine the briefs with this special notice in mind.

In this Reply Brief, Appellant will identify these misstatements of facts and distortions of legal decisions and he will impeach them, unequivocally, with documents and transcriptions from the Record of this case.

REPLY ARGUMENT I

APPELLEE YORK'S BRIEF SUBMITS FALSE STATEMENTS AND DISTORTIONS OF FACT UNDER THE HEADING OF "STATEMENT OF FACT".

A. Appellee's Brief at Page 3 makes the untruthful statement that Robert Spickler was not, personally, liable for payments of the mortgages that York issued to Dube. The mortgage notes prove that Robert Spickler was a guarantor for all of the mortgages given by York to Dube. [See copies at the end of this Brief - Pages 13 - 15.][1]

B. The appellee's attorneys, who are obligated by law not to try to mislead the Court, attempt to convince the Court that one of the issues in this case is a "complex" stock purchase of a real estate holding company.[2]

However, on November 29, 1993, Plaintiff Spickler notified the Superior Court that he would not be making any claims of negligence or malpractice on the part of Mr. York based on the acquisition of R. D. Realty's stock, rather than by the deed. [APP. Pg, 185]

---

[1] The intention to be dishonest with this Court is further revealed by the Appellee's Supplemental Appendix which includes the mortgages but "conveniently" omits the mortgages notes.

[2] This is obviously done to convince the Court that a jury is incompetent to decide the claim of malpractice and the phrase, "complex stock purchase", is repeated throughout York's Brief.

In that no claim will have been made on the stock purchase, that issue is moot and irrelevant to this lawsuit, and - the appellee knows it and is, therefore, being disingenuous to the Court by arguing otherwise.

C. The Appellee states that York represented Dr. Pettengill but does not state, as York admitted under oath, that he also represented Plaintiff Robert Spickler at the Closing.

This was another disingenuous presentation of fact to the Law Court to cause it to believe that York may not have been Spickler's lawyer at the Dube closing. [See York's admission that he represented Spickler at [APP - 82]

D. Appellee's distorted analysis of the Law Court's Decision in Spickler v. York, 566 A.2d 1385 (Me.1989) is another misrepresentation by his counsel in their "Statement of Fact">

The appellee states, audaciously, that the 1989 Decision "instructed" the trial court, as follows:

1. Expert testimony was needed to prove York's negligence.

2. That Spickler was precluded from introducing an expert "in any subsequent action".

No where in any part of the Law Court's Decision does the Law Court make either of those orders.

In fact, the key phrase used by the Defendant's counsel "in any subsequent action" shows that they, too, honestly understood that the Law Court allowed "subsequent action" and the "subsequent action" and the "subsequent action" would not take place if the Law Court's decision meant what Defendant's counsel pretends that it means.

REPLY ARGUMENT II

APPELLEE MAKES THE GROUNDLESS ASSERTION THAT SPICKLER'S CLAIM THAT "YORK ADMITS" THAT THE ORAL AGREEMENT TOOK PLACE IS SELF SERVING AND UNSUPPORTED BY THE RECORD.

At footnote 10 on Pages 17 and 18 of Appellee's Brief, York's counsel state:

> 10/ The self serving statements contained in the Plaintiff's Brief, i.e. "York admits that the oral agreement took place, (Footnote 10 continued on next page)
>
> (Footnote 10 continued from previous page)
> and where he BROKE HIS PROMISE to Spickler that he would put the oral agreement in writing and WOULD NOT DELIVER THE MORTGAGES TO DUBE UNTIL DUBE CLEARED THE TITLE, is unsupported by the record. The only statements made in that regard are the statements made by Robert Spickler himself. Representations to the contrary are misleading.

This contention is untrue and it was obviously known to be untrue by York's counsel when they made it.

It was, nevertheless, made because it goes to the heart of why this case should be remanded to trial with or without expert testimony.

York, as Spickler has argued in his Brief, did "admit" during the trial that the oral agreement took place. [See Page 19 of this brief.] Spickler and Pettengill both testified during the trial that York had promised to escrow the mortgages. [See Pages 17 and 18 of same]

And further, York did make the promise to Spickler, in the presence of Dr. Pettengill, who testified during the trial that the promise took place.[3] [See Pages 16 and 17 of this Brief]

York, as Spickler has argued in his Brief, did "admit" during the trial that the oral agreement took place. [See Page 19 of this brief.] Spickler and Pettengill both testified during the trial that York had promised to escrow the mortgages. [See Pages 17 and 18 of same]

And further, York did make the promise to Spickler, in the presence of Dr. Pettengill, who testified during the trial that the promise took place.[3] [See Pages 16 and 17 of this Brief]

If York has a strong position in this appeal, why are all of these misrepresentations necessary?

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[3]Spickler, York and Pettengill were the subjects of rigid cross examination by Mr. Piper and none of their testimony was impeached or changed during the trial. York did not challenge Spickler's testimony about his promise to escrow the mortgages.

ISSUE 2

Facts Relevant to Issue #2

During the period from 1978 through 1982, Robert and Olive Spickler borrowed from Key Bank of Southern Maine (formerly Depositors Trust Company) hundreds of thousands of dollars to help finance their real estate development in Parker's Neck, Maine. To secure those loans, the Spickler's pledged their various parcels of real estate, including a house in construction on Lot #26 located on Parker's Neck.

In order to liquidate the loans from Key Bank, the Spicklers agreed to allow the bank to sell the vaious real estate, for which the Spicklers signed over the deeds and apply the proceeds towards their indebtedness with any surplus to be given to them. The bank disposed of the property in ways that did not satisfy the Spicklers who sued the bank for mishandling the sale of their assets.[4]

One of the Counts alleged that the bank sold Lot #26 for less money than its true value. Notwithstanding Robert's argument that h had a personal interest in Lot #26, the Maine Superior Court [Brennan, J.] barred him from pursuing the claim because the deed was in Olive Spickler's name. Spickler argued further that Olive Spickler was not competent to present the claim on Lot #26, but the

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[4] Robert and Olive Spickler v. Key Bank, 618 A.2d 204 Me. 1992)

Court would not permit him to take part in the Lot #26 Count. [APP.-12, 61-63]

The jury found for the bank against Olive on the Lot #26 claim. Months later, after considering post trial matters, the Court issued a Judgment for the bank on Lot #26 against both Robert and Olive Spickler [APP.-73] and ordered Robert to pay almost $5,000 for the bank's costs in defending Olilve claim on Lot #26.[5]

ISSUE 3

Where, in the Courts of Maine, the records show that several of the trial attorneys who represented party opponents of Robert Spickler clearly made untruthful substantive, material and relevant statements to the courts and/or juries which were harmful to Spickler's pursuit of his claims, did the State violate Spickler's due process rights when it continually refused to grant him relief from this abuse?

FACTS RELEVANT TO ISSUE #3

There have been a multiplicity of cases where Robert D. Spickler has found it necessary to seek redress, pro se, for his grievances, either because lawyers refused to proceed against another lawyer,[6]

---

[5]This Court should note that the Superior Court had learned, during Olive's testimony, that she had become penniless, having lost all of her assets to Key Bank which could not collect any judgment from her, but they could collect from Robert who had won Judgment against the bank on one of his claims during the trial. [APP.- 57].

[6]This happened in the case of Spickler v. Joseph Brennan [APP.- 3,4] and to a lesser extent in Spickler v. York.

The cases applica to the issue of lawyers making untruthful statements on the record, or otherwise being permitted to abuse Spickler are:

1. Robert D. Spickler et als. v. Key Bank
   Attorneys: Jack Simmons and William Robitzek
2. Robert D. Spickler v. Leo Greenberg
   Attorney: Jonathan Brogan
3. Robert Spickler and R. D. Realty Corporation v. Dube and Levenson
   Attorney: Harrison Richardson
4. Robert Spickler and R. D. Realty Corporation v. Robert M. York
   Attorney: Jonathan Piper

These cases and attorneys, and the circumstances under which they lied to the Court or Jury are set forth in the Complaint. [APP.17-22, 27-35]

The following instances of misconduct of each of those attorneys are taken from the court records.

RE: Jack Simmons

During the process of the Key Bank case, Mr. Simmons subpoenaed Spickler to be deposed in Portland, Maine. Spickler traveled, as ordered, one hundred miles, round trip, to appear at Simmons' office. [APP.-35,36]

Mr. Simmons, without notice to Spickler, did not show up. Spickler moved for relief to the Superior Court which did not act. Later, on appeal, the Maine Supreme Judicial Court did not act, stating the "[the issue] was without merit and require[d] no discussion".

RE: William Robitzek:

Spickler's principal claim against Key Bank was that if they had disposed of the real estate by public auction, as promised, and not by private sale to an individual solicited by the bank, they would have received enough to leave a surplus which would be given to him.

During Robitzek's opening statement, he told the jury that the bank did not hold the promised auction because an auctioneer advised them that the real estate should not be sold by auction. Spickler objected because no auctioneer was called by the bank to testify during trial and asked the Court to advise the jury to disregard the statement in that there was no evidence to support it. The Court [Brennan, J.] refused.

During Robitzek's opening statement, he falsely told the Jury that the Spickler subdivision in Roque Bluffs, Maine (on which the bank failed to pay the taxes and lost it to the Town) was worthless because it had no legal access over neighboring land from the state road. This was untrue because Spickler testified during the trial that there was a recorded, deeded right-of-way over all of the land lying between the subdivision and the state road. Again, the Court ignored Spickler's objection and

request that the jury be instructed to disregard it. [APP.- 19] [7]

Another one of Robitzek's false statements made to the Jury[8] was objected to and ignored by both the Superior and Supreme Courts, was telling the Jury that the Spickler's lawyer, Mr. Duane Fitzgerald, had told the bank that a judgment that Mr. Spickler assigned to them was uncollectible.[9] The Judgment amounted to approximately $30,000 and was given away in a package deal, without charge, by the bank to the private buyer.

In general, Mr. Robitzek, notwithstanding Spickler's protests to both Courts, was permitted to act virtually as an anarchist, even being allowed to physically shove Spickler, a seventy year old man, around the court during the trial. [APP.- 20 - 22]

RE: Jonathan Brogan

In this case, Defendant Greenberg hired Broker Spickler to sell his business, a woman's clothing store. Greenberg signed a purchase and sale agreement with the buyers and a few weeks later refused to go through with the sale.

---

[7] It is ironic that, although this was an error assigned on appeal for the Maine Supreme Court, the M.S.J.C. stated in its Decision that:

> "the Spicklers had no legal right of access to the property". 618 A.2d at 205

[8] Appellant, in keeping with his intention to be as brief as possible, will not cover all of Robitzek's dishonesty which was permitted by the Court during the trial over Spickler's objections.

[9] Mr. Fitzgerald was not called upon to testify on this issue.

In that Spickler had earned his commission, Spickler, through an attorney, sued Greenberg about a year later in order to collect it. Ultimately, a non-jury trial took place where Greenberg testified falsely that, although the contract stated that he would pay Spickler's commission, he signed it only because Spickler had told him that he should pay no attention to the written agreement in that the buyer would pay Spickler's commission. The judge [Bradford, J.] found for Greenberg "because Spickler had told him that irrespective of the contract that the buyer would pay the commission."

Spickler, pro se, sued Greenberg for committing perjury during the first trial.[10]

Spickler testified during the second trial that Greenberg made the perjured statement to him for the first time when Greenberg was being sued for the commission and had several opportunities to make the statement earlier when he first wanted to cancel, including meetings with Greenberg's lawyer, Mr. Marcus, which took place a few weeks after he signed the purchase and sales agreement.

Spickler testified during the second trial that Greenberg did not mention anything about Spickler telling him that the buyers, and not Greenberg, would be paying the commission, and Spickler argued

---

[10]Maine Law permits action for perjury committed during a trial. TITLE 14 SEC 870 M.R.S.A.

at closing, that Greenberg perjured himself only to get out of the deal.[11]

Mr. Marcus, also, testified that he could not recall that issue coming up at those early meetings. Notwithstanding Marcus' testimony on this question, Mr. Brogan, in his closing statement told the jury that although Spickler testified that Greenberg did not bring up the fact that he signed the contract only because he was told by Spickler that the buyer, and not he, would be paying the commission, you heard Mr. Marcus testify -"that this was brought up in their first meeting". Spickler objected and the stenographer read back Marcus' testimony which showed that Brogan stated it falsely. [APP.-28,29]

Spickler sought sanctions and special instructions, but the Superior Court refused, stating that it would simply inform the jury that closing statements are not evidence.

On appeal to the Maine Supreme Judicial Court, this issue was presented but not addressed in its decision.[12]

---

[11]The Jury agreed and unanimously found Greenberg guilty of perjury. [APP. - 47]

[12]Earlier during the trial, Spickler complained to the Court about Brogan's policy of misstating facts prejudicial to Spickler and even warned Brogan that he would be sued if he continued this practice. Brogan then went to Judge Lipez and said he was being threatened by Spickler. The Judge warned Spickler that he would not permit Spickler to bully Mr. Brogan. After Brogan falsely quoted Mr. Marcus' testimony during his closing argument, Spickler, at the side bar, called Brogan a 'phoney bastard' and Judge Lipez found Spickler in contempt and fined him $1000. [On appeal, the M.S.J.C. ignored the argument that Brogan's misconduct caused Spickler's reaction and affirmed the criminal conviction.]

RE: Harrison Richardson

The core issue of Spickler's case against Levenson was that Mr. Richardson's client, Levenson, suborned perjury when he placed the fabricated letter into evidence.

During the hearing before Judge Mazzone on August 12, 1987, without Spickler being present, Mr. Richardson falsely told the judge that Spickler's attorney, Mr. Fitzgerald, had stated that he believed that the letter was legitimate. The record shows that Richardson had deposed Fitzgerald earlier and the deposition shows that Fitzgerald suspected that the letter was not legitimate. This was raised on appeal to the Maine Supreme Judicial Court in the appeal of Spickler and R. D. Realty Corporation v. Dube and Levenson and the Maine Supreme Judicial Court did not address this issue while dismissing the case. [APP.-27,28]

RE: Jonathan Piper

To avoid redundancy in the papers submitted in this appeal, Appellant urges this honorable Court of Appeals to read Pages 85 through 89 in the Appendix. After which, he asks that the Court return to this brief where ARGUMENT III addresses the ways in which the State of Maine, by tolerating Attorney Piper's misconduct, has revealed its intolerance for Spickler's guarantees of due process of law by the Constitution of the United States.

ARGUMENT I

A. THE INJUNCTION AGAINST SPICKLER ISSUED IN 1987 IS INAPPLICABLE TO THIS CASE.

B, THE COMPLAINT RAISES FEDERAL ISSUES WHICH WERE RAISED IN THE MAINE COURTS AND REJECTED; AND DOES NOT SEEK TO RELITIGATE CLAIMS AGAINST FORMER DEFENDANTS.

A. For the convenience of the Court, the Injunction of August 12, 1987 is reproduced here:

> 3. This Court orders and decrees that Plaintiff Robert D. Spickler, his agents or persons acting in concert with him, are hereby entoined permanently from filing any complaint in any federal court relating to the transactions involving the Dube/R. D. Realty mortgages on the so-called Parker Head land, including, but not limited to, lawsuits accusing Roger P. Dube, Alan J. Levenson (individually or as administrator), agents of a party (including attorneys, law offices or employees of law offices), judges or witnesses in this or any earlier proceedings, of perjury, fraud, or falsifying evidence, unless Mr. Spickler, before he files any further action, satisfies a judge of this court that the action he seeks to file presents at least a prima facie case and will not constitute a[13] further abuse of the process of the Court.

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[13] Spickler feels no resentment against Judge Mazzone for choosing to issue the injunction. The judge was new to the case and was not familiar with the record. However when Mr. Richardson stood before him and prefaced his statement as one given by an "Officer of the Court", after which, he told the judge that Spickler's own lawyer, Mr. Fitzgerald, believes that the letter, the key document on which the case was brought, is legitimate, what else could the judge conclude other than that Spickler is probably irresponsible and brings frivolous lawsuits.

B. Pursuant to Paisey, Spickler has shown in his complaint that the state, through its highest court, has placed its weight behind a position adverse to not one but several of his federal rights in the form of an immediately enforceable state court judgment.

Contrary to the District Court's ruling, Spickler does not seek to relitigate claims against former defendants or their attorneys who were permitted by the state to violate his federal rights. Spickler has not named any of those individuals as defendants in the complaint.[14]

Spickler presented a complaint to the District Court which showed, explicitly, more than the required facts and law to support his right to a forum under Sec. 1983. In return, he received, without a hearing, a brusque, inordinately swift and subjective ruling which further impaired his civil rights when the District Court called the complaint (automatically) "frivolous". [A.B. -32][15]

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[14] Private parties and their attorneys are not actionable defendants under Sec. 1983. See, for example Brisco v. Lattue, 460 U.S. 325 (1983)

[15] The United States Supreme Court has established that pro se complaints are subject to a("less stringent standard than formal pleadings drafted by lawyers and should be liberally construed in the plaintiff's favor"). It said that automatically ruling a pro se complaint as frivolous is to be avoided. Hughes v. Rowe, 449 U.S.5 (1980); Dayse v. Schuldt, 894 F.2d 1170, 174 (5th Cir. 1990)

The Supreme Court has said in order for a complaint to be frivolous it must lack an argueable basis in law, or in fact. Neitska v. Williams, 109 S.Ct. 1827,1831 (1989)

The District Court, in throwing out the suit, offered not a single law or fact supporting its decision that it was "frivolous". And, without an evidentiary hearing, found that it was brought in "bad faith".

ARGUMENT II

WHERE THE COURT OF THE STATE OF MAINE BARRED ROBERT SPICKLER FROM BEING A PLAINTIFF IN THE CLAIM AGAINST THE BANK FOR MISHANDLING THE SALE OF LOT #26 BY RULING THAT OLIVE SPICKLER WAS THE ONLY PLAINTIFF, IT, SUBSEQUENTLY, VIOLATED ROBERT'S RIGHTS TO DUE PROCESS BY ORDERING HIM TO PAY THE BANK'S COSTS IN DEFENDING OLIVE'S CLAIM ON LOT #26.

This Argument is so clear that it could be used in a grade school civics class as an example of what the state is forbidden to do by the Fourteenth Amendment; i.e., in this country, no one's property can ever be taken away without the opportunity to be heard in a court of proper jurisdiction. This should apply to pro se litigants as well as everyone else.[16]

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[16]Plaintiff recalls reading somewhere about a comment made in 1791 by John Adams concerning the Fifth and Seventh Amendments upon their adoption. Plaintiff does not have the citation, but perhaps the learned members of this Court will recall it). Paraphrased, Mr. Adams said that he could now live without fear that his property and other life's earnings could be taken from him by a government official, but only by a jury made up of his countrymen, the people who worked and lived all around him. How would Mr. Adams react to Issue #2?

But above and beyond the doctrine of Fitzpatrick, even if this honorable Appeals Court were to disagree with Spickler's reasoning and conclude that irrespective of the experience of Spickler in the Maine Courts, that the Eleventh Amendment, nevertheless, bars his suit against the State, Spickler is still entitled to prospective relief under the doctrine of Ex parte Young.

UNDER ANY SET OF CIRCUMSTANCES, SPICKLER IS AT LEAST ENTITLED TO PROSPECTIVE RELIEF.

In his complaint, Spickler has alleged that he holds certain real estate deeds which require validation by the Maine Courts and he, effectively, is also seeking prospective relief. [APP.P.52 #152, P.34 #183, P. 37 #198]

In that the Maine Court is the only forum in which he can present the deeds for determination of their validity, unless the federal court issues an order which mandates that future violation of Spickler's federal rights will not be permitted, he will have been denied his First Amendment right to petition the government for a redress of his grievances. If relief is denied by this Court, his loss of Fourteenth Amendment rights to due process will continue as in the past under certain Maine judges.

If construed literally, the Eleventh Amendment would prohibit federal courts from granting injunctive relief requiring the states to conform to the requirements of the U.S. Constitution, rendering the federal courts powerless to enforce the essential purpose of Sec. 1983. This would be so, no matter how blatant the misconduct of the State would be, even as blatant and incontrovertible as it was against Spickler as proven to this Court in the documents on hand.

However, this is not how the Eleventh Amendment has been interpreted. The Supreme Court in 1908 resolved in Ex parte Young, 209 U.S. 123 (1908) that the Eleventh Amendment does not deprive the federal courts of the power to require state officials to comply with the federal constitution. Young reasoned that, since any authority given by the states to their officials must be exercised consistently with the commands of the federal constitution, a state official who acts in violation of the Constitution is "stripped" of her official or representative character and is subjected in her person to the consequences of her individual conduct.

Therefore, the reasoning goes, prospective relief that requires a state official to comply with the federal Constitution operates against the official in his or her personal capacity. It is outside the scope of the Eleventh Amendment which

affords immunity protection to the states, but not to individuals.[2]

The Young doctrine was born of necessity

> "to permit the federal courts to vindicate federal rights and hold state officials responsible to the supreme authority of the United States."[3]

Eminent authority regards Young as one of the three most important decisions ever rendered by the Supreme Court. 17 C. Wright, A. Miller & E. Cooper, Federal Practice and Procedure. The authors point out that the decision in Young made it unnecessary for the court to determine whether the Fourteenth Amendment qualifies the Eleventh Amendment.[4]

Despite the fact that the theory of Ex parte Young is that the state official is "stripped" of official capacity, the Supreme Court, in Kentucky v. Graham[5] referred to an action under Young as an "official capacity" action. Since the decision in Graham the courts have consistently referred to claims within Young as brought against state officials in their official capacities.[6]

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[2] Pennhurst State School and Hosp. v. Halderman, 465 U.S. 89, 102 - 105 (1984). See also, Papasan v. Allain, 478 U.S. 265, 276 - 79 (1986).

[3] Pennhurst at 105 quoting Young 209 U.S. at 160.

[4] 17 C.Wright, A.Miller & E.Cooper, Sec.4231 at 559 and Sec.4232 at 578 (1988)

[5] 473 U.S. 159, 167 N.14 (1985)

[6] Among several others, see Libby v. Marshall, 833 F. 2d 402, 406 (First Cir. 1987)

The Young doctrine allows the federal courts to grant a wide array of coercive forms of prospective relief, including relief from the misconduct of Maine judicial officials, such as, Superior Court Judge Arthur Brennan who, in the face of the Fourteenth Amendment, ordered that Robert Spickler's property be taken from him, notwithstanding that, at the same time he slammed the doors of the courthouse in Spickler's face, ruling he could not take part in the proceedings from which he ordered that the property be taken from him. On appeal, when Spickler brought the Brennan error to the attention of Maine's highest court, Chief Justice Wathen refused to even rule on the claimed error, by which the Court permitted several named lawyers to lie to the Court and juries by stating substantive, relevant and material facts to the Court and Jury, all of which damaged Spickler, Chief Justice Wathen ruled that claim, too, "was without merit and did not require any discussion".

These are only two examples of how Maine's highest judicial officials have acted in abject disregard of Spickler's federal rights to due process. There is every likelihood that any jury will find it will continue. This honorable First Circuit Appeals Court should rescue Spickler and order that it be stopped in the future.

UNITED STATES COURT OF APPEALS
For the First Circuit

Docket No. 94-2240

ROBERT D. SPICKLER,
Plaintiff-Appellant

v.

THE STATE OF MAINE,
Defendant-Appellee

APPELLANT'S MOTION THAT THE COURT PERMIT ORAL ARGUMENTS IN THIS APPEAL.

Plaintiff-Appellant Robert D. Spickler moves this honorable First Circuit Court of Appeals, as follows:

1. With the filing of the Reply Brief dated February 25, 1995, all of the Briefs of the Appellant and Appellee are on file with this Court.

2. Appellant asks that the Court permit oral arguments and not submit the case for its decision without giving the appellant the opportunity to be heard.

3. These are the reasons for which oral arguments should be permitted:

(a) On the Issues of whether Spickler's federal rights were violated, the State of Maine always refused Spickler the right to be heard, thus denying oral arguments.

(b) When Spickler sought relief in the U.S. District Court,
it, like the Maine Courts, also refused to grant a hearing of the same issues on which the Maine Court refused a hearing, also denying oral arguments.

(c) Spickler's adversary attorneys, including the State's attorneys in this very appeal, have always attacked him with personal innuendo, inferring that he brings frivolous, or vexatious actions, and this Court should see him, personally, and make up its <u>own</u> mind on their <u>own</u> experience of seeing him eye to eye while he argues and is questioned before them.

(d) The State has clearly avoided responding in its brief to the vital Issues raised in Spickler's brief which show that his Fourteenth Amendment rights were ignored by the Maine courts. Shouldn't this honorable Appeals Court question the State in the presence of Spickler as to why the State failed to respond?

(e) In reality, this First Circuit Court of Appeals is his Court of last resort. (While, technically, he has the prospective right to

ask for review by the U.S. Supreme Court, the odds of the Supreme Court granting certiorari are so remote as to be hopeless.)[1]

(f) This is a case that should trigger the safeguards, ostensibly, set up to prevent a state from doing to its citizens what Maine has done to Spickler.

CONCLUSION

This case comes at a time when much of our general public feels distrust for the officials who run the government. By permitting oral arguments, this Court will make it clear that, irrespective of what may have happened to an ordinary citizen, resulting in mistreatment by the state courts, the federal courts will grant all opportunities for that citizen to seek redress.

Respectfully submitted this 15th day of March 1995.

/S/_____
Robert D. Spickler
Plaintiff,Appellant, pro se

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[1]Plaintiff has searched for a case where a non-criminal pro se litigant has been granted 'cert' and none can be found.

191. That, to confirm Paragraph #190, one need only to contemplate what would have happened to Spickler if the tables were turned and he called Mr. Simmons to a deposition and Spickler failed to show up.

COUNT XV

192. Plaintiff re-alleges all of the facts set forth in COUNTS I - XIV and includes them here in this COUNT XV, and he further alleges:

193. That the State of Maine, since the retirement of Chief Justice McKusick, has shown a pattern of prejudice against Spickler and his corporation that is so embedded within its Courts that the plaintiff could not, in any set of circumstances receive constitutionally acceptable treatment of his grievances.

194. That, as things stand with the present Maine Supreme Judicial Court, Robert D. Spickler, in effect, does not have a venue within the system of justice in the State of Maine.

195. That the State of Maine, through its judiciary, have effectively made it clear to Spickler that he is persona non grata in its Courts and must not dare to seek justice there.

196. That even when he struggles through the maze of Maine court's injustices and obtains jury verdicts, the Supreme Judicial Court will make sure they will be taken away. [EXHIBITS - B and C]

197. That the current Maine Courts, in two separate actions, have rendered substantial money judgments to Plaintiff's opponents, without benefit of a trial by jury.

198. That, even now, Plaintiff holds valuable deeds to real estate in Maine which require the Maine judiciary to confirm his title, but Spickler knows that his position is hopeless if he can only present this problem to the State of Maine for adjudication.

Plaintiff now comes to his country's court system and begs it to help him.